## NIAD 214.1 (10103730)

CERTIFICATE OF FACSIMILE TRANSMITTAL

Inhereby certify that this correspondence is being terremitted a telecopy pursuant to 37 CFR \$1.8 to Group 1617. Exemplate S. Hud of the United States Patent & Trademark (Ritched (703) 3084336 on November 28, 2002.

By Laurie Olds

(Name of Transmitter)

(signature)

#13 #XD 12/19/0:

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s)

Elaine L. Jacobson, et al.

Serial No.

09/834,228

Filed

April 12, 2001

For

METHODS AND COMPOSITIONS USEFUL IN ENHANCING

**OXYGEN DELIVERY TO CELLS** 

Art Unit

1617

Examiner

S. Hui

November 26, 2002

Hon. Commissioner of Patents and Trademarks Washington, D.C. 20231

## <u>PETITION TO WITHDRAW</u> <u>FINALITY OF OFFICE ACTION</u>

Sir:

This is a petition to withdraw the finality of the office action dated November 20, 2002.

The office action is improperly final because it rejects claim 30 as being anticipated by Huber, U.S. Patent No. 2,431,558. See the rejection at page 2.

#25236413v

1

### NIAD 214.1 (10103730)

Claim 30 corresponds to prior claim 23. See the amendment of April 1, 2002. Claim 23 was considered in the office action of June 18, 2002, but was not rejected under 35 U.S.C. §102.

If an examiner could have made a rejection on first action, but did not, raising it for the first time in a second office action precludes the designation of the action as a final rejection. Hence, the examiner must either withdraw the rejection, or if she maintains it, the office action must be deemed non-final.

Favorable action on this petition is requested.

Respectfully submitted,

FULBRIGHT & JAWORSKI L.L.P.

Norman D. Hanson

Reg. No. 30,946

666 Fifth Avenue New York, New York 10103 (212) 318-3000

(65°)

# FULBRIGHT & JAWORSKI L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP
666 FIFTH AVENUE, 31ST FLOOR
NEW YORK, NEW YORK 10103-3198
WWW.FULBRIGHT.COM

FAX RECEIVED

NUV 2 7 2002

GROUP 1600

## **FACSIMILE TRANSMISSION**

n	A 7	· G
L)	ΑI	E

November 26, 2002

MATTER NUMBER:

10103730

RECIPIENT(s):	FAX No.:	PHONE No.:	
Examiner S. Hui	703-308-4556		
USPTO, Group 1617			

FAX RECEIVED NOV 2 7 2002 GROUP 1600

FROM:

Norman Hanson

USER ID:

NH01030

FLOOR:

24

PHONE:

(212) 318-3168

FAX:

(212) 318-3400

RE:

**NIAD 214.1** 

Number of Pages with Cover Page:

Message:

#### **CAUTION - CONFIDENTIAL**

THE INFORMATION CONTAINED IN THIS PACSIMILE IS CONFIDENTIAL AND MAY ALSO CONTAIN PRIVILEGED ATTORNEY-CLIENT INFORMATION OR WORK PRODUCT. THE INFORMATION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED. IF YOU ARE NOT THE INTENDED RECIPIENT, OR THE EMPLOYER OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY USE, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THE FACSIMILE IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ADDRESS ABOVE VIA THE U.S. POSTAL SERVICE. THANK YOU.

IF YOU DO NOT RECEIVE AL	L OF THE PAGES, PLEASE CALL
ΔŤ	A S COON AS POSSIBLE